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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,620	09/19/2003	David E. Galomb	F1012/20134	4006
3000	7590	01/19/2006	EXAMINER	
CAESAR, RIVISE, BERNSTEIN, COHEN & POKOTILOW, LTD. 11TH FLOOR, SEVEN PENN CENTER 1635 MARKET STREET PHILADELPHIA, PA 19103-2212			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 01/19/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/664,620	Applicant(s) GALOMB, DAVID E.	
	Examiner Jes F. Pascua	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-38 and 60-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-44, 50, 51, 53, 55 and 57-59 is/are rejected.
- 7) ☒ Claim(s) 45-49, 52, 54 and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/12/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 39-59, in the reply filed on 12/15/2005 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 39-42 and 51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-14 of U.S. Patent No. 6,953,069. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 10-14 of U.S. Patent No. 6,953,069 contain

every element of claims 39-42 and 51 of the present application and as such anticipate claims 39-42 and 51 of the present application.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 40-42, 47-49 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 40 and 47, the functional recitation that "at least a portion of the periphery of said base wall is constructed to control the propagation of the cut in said package" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

In claim 56, "said reinforced portions" lack antecedence.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 39-41, 50 and 51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doyen et al. See Fig. 7.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, the seal line 6b in Doyen et al. meets the structure implied by the functional recitation "constructed to control the propagation of the cut in said package."

8. Claims 39-41, 50, 57 and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Frisk.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion

of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language “whereupon said package can be introduced into the opening”, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, the seal line 40 in Frisk meets the structure implied by the functional recitation “constructed to control the propagation of the cut in said package.”

Regarding claim 57, the base wall of the Frisk package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

9. Claims 39-41, 50, 57 and 59 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Erickson et al.

The recitation “A package for use in a system...the system including an opening” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, the seal line 56 in Erickson et al. meets the structure implied by the functional recitation "constructed to control the propagation of the cut in said package."

Regarding claim 57, the base wall of the Erickson et al. package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

10. Claims 39-41, 43, 44, 50 and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gautier.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening", a recitation of the intended use of the claimed invention must result in a

structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, the seal lines 5a, 5b, 6a, 6b, 7a, 7b in Gautier meets the structure implied by the functional recitation "constructed to control the propagation of the cut in said package."

Regarding claim 57, the base wall of the Gautier package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

11. Claims 39-41, 43, 44, 50, 51 and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kugler.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, the seal lines in the periphery of the Kugler base wall meets the structure implied by the functional recitation "constructed to control the propagation of the cut in said package."

Regarding claim 57, the base wall of the Kugler package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 42 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyen et al., Frisk or Erickson et al. in view of Bustin:

Doyen et al., Frisk and Erickson et al. each disclose the claimed device except for seal lines forming the periphery of the base wall being crimped heat seal. Bustin discloses that it is known in the art to define the periphery of an analogous base wall with crimped heat seals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base wall seal lines of Doyen et

al., Frisk or Erickson et al. with the crimped heat seals of Bustin, in order to stiffen the bottom of the package.

14. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyen et al., Frisk, Erickson et al., Gautier or Kugler.

Doyen et al., Frisk, Erickson et al., Gautier and Kugler each disclose the claimed invention except for angled linear seals extending at an angle greater than 45 degrees to its associated linear side edge. It would have been an obvious matter of design choice to extend the angled linear seals of Doyen et al., Frisk, Erickson et al., Gautier or Kugler such that they are at an angle greater than 45 degrees to its associated linear side edge, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

15. Claims 45-49, 52 and 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP